

Special Civil Application No 793 of 1988

Date of decision: 16/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

IBRAHIM ISAP BHARUCHA & ORS.

vs

STATE OF GUJARAT & ANR.

Appearance:

Shri S.H. Sanjanwalla, Advocate, for the Petitioners

Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

ORAL JUDGEMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 23rd December 1987 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under articles 226 and 227 of the Constitution of India. By its impugned order, respondent No. 1 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 556.13 square meters after upsetting the order passed by the Competent Authority at Surat (respondent No. 2 herein) on 1st June 1984 under sec. 8(4) thereof. By his aforesaid order, respondent No. 2 came to the conclusion that the holding of the petitioners was not in excess of the ceiling limit.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No. 1 filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat and Bombay. That form was duly processed by respondent No.2 herein. After observing necessary formalities under sec. 8 of the Act, by his order passed on 1st June 1984, respondent No. 2 declared the holding of the declarant to be within the ceiling limit. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. Thereupon a show-cause notice came to be issued on 23rd August 1987 calling upon the petitioner to show cause why the order at Annexure A to this petition should not be revised. A copy of the aforesaid show-cause notice is at Annexure B to this petition. The petitioners filed their reply thereto on 24th April 1987. Its copy is at Annexure C to this petition. After hearing the parties, by the order passed on 23rd December 1987 under sec. 34 of the Act, respondent No.1 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 556.13 square meters and that of petitioner No.2 to be within the ceiling limit after setting aside the order at Annexure A to this petition. A copy of the aforesaid order passed by and on behalf of respondent No.1 on 23rd December 1987 is at Annexure D to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition.

3. I think the view taken by the author of the order at Annexure D to this petition that, during the life-time of petitioner No.1 his progeny cannot have any interest in the holding in question, cannot be interfered with. That is quite in consonance with the legal position in that regard. It appears that respondent No.1, the author of the impugned order at Annexure D to this petition, has rightly divided the holding between petitioners Nos. 1 and 2 in accordance with the principles of Muslim Law pertaining to intestate succession. It needs no telling that thereunder a brother gets twice as much as his sister. The author of the impugned order at Annexure D to this petition has rightly come to the conclusion that the holding of petitioner No.2 was not in excess of the ceiling limit.

4. It transpires from the material on record that the property bearing survey Nos. 25 and 26 situated at Rander within the urban agglomeration of Surat admeasuring 2529 square meters had a constructed property. It is an admitted position on record that it was in existence prior to coming into force of

the Act and that it was initially an unauthorised construction which came to be subsequently regularised. It cannot be gainsaid that regularisation of such construction will relate back to the date of construction itself. In that view of the matter, there is no escape from the conclusion that the construction on the aforesaid parcel of land was in existence prior to coming into force of the Act as an authorised construction.

5. It transpires from the material on record that the construction was to the tune of 557.40 square meters. The appurtenant land available to it would be in accordance with the building regulations and over and above additional land appurtenant to the tune of 500 square meters in view of the definition of that expression contained in sec. 2(g) of the Act. Even if it is assumed that only 500 square meters of land by way of land appurtenant is available with respect to the said construction, the total area for the building and the land appurtenant thereto would be 1057.40 square meters. This area will have to be excluded from the holding of petitioner No.1 in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 Supreme Court 1567.

6. As transpiring from the impugned appellate order, the holding of the petitioner No.1 was found to be 2056.13 square meters. If the area of 1057.40 square meters is excluded therefrom, his holding for the purposes of the Act would be little less than 1000 square meters. That would certainly be within the ceiling limit of 1500 square meters prescribed for the urban agglomeration of Surat.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition cannot be sustained in law and it has to be quashed and set aside though on different reasoning.

8. In the result, this petition is accepted. The order passed by and on behalf of respondent No.1 on 23rd December 1987 under sec. 34 of the Act at Annexure D to this petition is quashed and set aside. It is hereby declared that neither petitioner No.1 nor petitioner No.2 held any land in excess of the ceiling limit for the purposes of the Act. Rule is accordingly made absolute with no order as to costs.
